

FILED

JUL - 2 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK W. RUPP, and DOUGLAS
J. GOULD

No. C08-01939SBA

PLAINTIFFS

V.

DEMAND FOR JURY TRIAL

FIRST AMERICAN TITLE COMPANY.

DEFENDANT.

THIS DOCUMENT IS FOR THE HONORABLE JUDGE ARMSTRONG TO READ.

Your Honor, my name is Douglas Gould, I brought this case before this Court because the Law has been broken. Frank Rupp has very little knowledge of the Law or where his rights have been violated. The defendant has violated Federal Protected Due Process Rights in a Criminal Act of Harassment.

Frank Rupp sold his Condo in the City of San Francisco in June 2003, and did receive the correct amount in which he was no longer bonded to the sale. When the Defendant went to transfer the Title over to the Buyer, they found a Fee in the amount of \$75,400,37 attached to the Title on record with the Mayors Office of Housing Program in which Frank Rupp purchased the Condo threw that Program. The Title Company is required to pay that Fee under the Rules and Regulations of California State Insurance Laws, which the Defendant did pay on August 1, 2003. The Fee is not listed on the California Residential Purchase Agreement Contract Form, which is a standard form for all sales in this State, nor is the Fee listed on the Final Closing Statement, which is another standard form with the adjusted cash figure the seller, receives.

The Harassment began when they step outside the bonds of insurance laws and called Frank Rupp in Reno Nevada and demanded he send them back the said Fee or he will not like what they will do to him. It became a Federal Case when the defendant crossed the State line with the phone call and its threat and carried it out by getting a Summary Judgment of \$75,400,37 plus legal Fees, by telling a Nevada Court that they made a mistake and over paid

1 him when there is nothing on record of said fee until after the
2 sale and Frank Rupp received the correct closing amount.

3 The Harassment still continues by the defendants lawyers Your
4 Honor, known there are Motions pending in the Nevada Court to
5 reopen the case, and reverse the Judgment as advise to do in a
6 Order from Judge Patel, the defendant filed an application to
7 enforce a Sister State judgment in a Court in Riverside County
8 California.

9 We dealt with these lawyers that filed in Riverside when we filed
10 a Breach of Contract in 2004, and withdrew the case as not to
11 involve the Buyer as an innocent party.

12 We dealt with the California State department of Insurance and
13 withdrew as not effect the jobs of innocent people who work for
14 First American Title.

15 We worked with the Nevada State Supreme Court to resolve the case
16 and under their appeal laws could only do so much to help.

17 We are working with the Nevada State Attorney General in what is
18 needed to resolve matters.

19 We followed the advice on how to report a crime to the letter
20 from the California Attorneys Generals Office.

21 We have a letter from Rupp's former lawyer in Nevada telling him
22 the case is closed, the Judgment stands and tells him not to
23 appeal, and there is no plea or trial, and another letter from
24 the lawyer addressed to Nevada Bar which states he is no longer
25 with his former firm when he represented Rupp, but yet I talked
26 to him on the phone at the same firm not three months ago to
27 date.

28 These people and their lawyers need to be stopped your Honor, I
have been put out of my home because of the crime committed, a
home I was long in before Rupp even thought about selling his
condo, he and my family came to Reno when became ill with a born
illness which crippled me in 2002, and in 2003. I have been
dealing with this case since 2003 which has been hard enough, let
alone with Social Security since 2002, like any crime, there are
victims, and this one they put right out on the streets as
homeless and in pain, ask the staff here at the Marin County Law
Library how my hands swell up from typing and how often I have to
walk my back off from pain. Frank Rupp is not a young person and
has suffered in a lot of ways, from a bad line of credit to
losing his home, and how people, from neighbors to family and
friends looked upon him as if he did something wrong in selling
his Condo and I myself witness the stress he was put threw from
the Reno Court action.

1 Attached to this document is the Complaint the defendant filed in
2 the Reno District Court accusing Rupp of a number of Criminal
3 acts in the sale of his condo. It appears the defendant based the
4 alleged acts from a letter/document from the Mayors Office
5 Housing Program, which informs the Title Company of the
6 \$75,400,37 attached Fee to the Condo. The said letter is dated
7 June 25th, 2003, Five days before the wire transfer into Rupp's
8 bank account.

9 And again Your Honor, the said letter falls within the scope of
10 the Title Company's requirements to provide insurance coverage
11 under California State Laws.

12 The defendant claimed in the Complaint they made a mistake and
13 over paid Rupp. If they would have caught this mistake before the
14 wire transfer, then the chances are we would not be in this
15 Court. The seller has the right to refuse and not sell for
16 whatever reason and if the defendant or buyer chose not to accept
17 the sale decision, then Arbitration is required under California
18 Law. If the defendant believed Frank Rupp caused them to make
19 said mistake as a criminal act, then they are required like
20 everyone with such belief to report it to the proper authorities
21 such as the District Attorneys Office in San Francisco for
22 prosecution, and that office would have been responsible in
23 convincing a jury person as a homeowner, the Seller, after paying
24 Title insurance coverage, is responsible for paying for a MISTAKE
25 the Title Company is paid not to make. If Rupp's lawyer went to
26 Trial in the Reno Court, chances are we would not be in this one.

27 We have tried to resolve this matter threw the authorities we
28 complained to by trying to get the defendant to withdraw their
complaint in the Reno Court and return the money taken with
interest and they replied to the California State Senor Insurance
Investigator with (Go F**k yourselves, we have a Judgment). On
June 18th, 2008 we filed in this for the ADR phone conference set
for June 26th, 2008, they replied on June 23rd, 2008 by serving
Rupp in person at his home with the Sister State Judgment filed
with the Riverside County Court House California.

I have worked with different Courts back East in service to
better the Community your Honor, and I heard it said, which I
believe applies in this case; the ignorance of Law is no excuse.
I am going to try and make sure the defendants headquarters' get
this document within about Three days after its filing in an
attempt make aware to the owner of the information it contains in
hopes this can be resolved out of Court. But until that happens,
we request the forgoing upon the following page.

1 We request of this Court to have Jurisdiction and proceed forward
2 for Justice to be served.

3 We request a Court date as soon as possible as not to prolong
4 this case for Pre Trial Motions to be filed.

5 We request a Jury Trial as soon as possible.

6
7 It is requested Plaintiff Frank W. Rupp be awarded Twenty Million
8 Dollars (\$20,000,000) for hardship damages.

9 It is requested Plaintiff Douglas J. Gould be awarded Five
10 Million Dollars (\$5,000,000) for hardship damages.

11 We request on or before Jury Selection to submit actual money
12 damages.

13
14 The amount of hardship damages is half of what a Jury awarded in
15 another case where the Insurance Company failed to provide
16 coverage were required under law.

17
18 Thus, we pray to precede forward and Thank You Your Honor for
19 your time in reading this document and for this case to be heard
20 in your Courtroom.

21
22
23 *Frank W. Rupp*
24 Frank W. Rupp Plaintiff

Douglas J. Gould
Douglas J. Gould Plaintiff

25
26
27
28 CC. U.S. JUSTICE Dept.

1 3. The true names and capacities, whether individual, corporate, associate or
2 otherwise, of Defendants named herein as DOES I through XX, inclusive, are unknown to
3 Plaintiff, but Plaintiff is informed and believes that said Defendants are liable to Plaintiff as alleged
4 herein and Plaintiff prays for relief to amend its complaint to state the true names and capacities
5 of such parties when the same have been ascertained.

6 4. That upon information and belief, at all times relevant hereto, Defendant was
7 acting in an agent/servant relationship, and the Defendant was the agent, servant, and employee
8 of each and every other Defendant, and the each were acting within the purpose, course, and scope
9 of said employment and agency, and with the knowledge and consent of there principal and
10 employer.

11 5. On or about June 30, 2003, in connection with Defendant's sale of the Subject
12 Property, First American caused \$75,400.37 to be paid by mistake to Defendant. The mistake
13 occurred as follows: The escrow for the sale of the Subject Property closed on June 30, 2003.
14 Prior to close of escrow, the Subject Property was encumbered by a first position deed of trust in
15 favor of First Republic Bank and a second position deed of trust in favor of the City and County
16 of San Francisco, securing a loan made by the City in Connection with the Mayor's Office of
17 Housing (hereinafter the "City of San Francisco Deed of Trust"). Pursuant to the instructions of
18 Defendant, Defendant expressly agreed and instructed First American to pay off the City of San
19 Francisco Deed of Trust in the amount of \$75,400.37. Solely as a result of an error, \$75,400.37
20 was mistakenly delivered to Defendant Rupp by wire transfer instead of the City of San Francisco.

21 6. Plaintiff is informed and believes that Defendant has retained the mistaken wire
22 transfer of \$75,400.37 and has failed, neglected and refused, and continues to fail, neglect and
23 refuses to pay the same or any part thereof to First American, and neither the whole nor any part
24 thereof has been paid, thereby breaching an implied contract for the payment of the City of San
25 Francisco Deed of Trust and/or to repay the funds.

26 7. As a direct and proximate result of said breach, Plaintiff has suffered damages
27 in an amount in excess of Ten Thousand Dollars (\$10,000.00) according to proof at time of trial,
28 plus prejudgment interest at the legal rate from June 30, 2003.

1 8. Plaintiff has been required to retain counsel to initiate this action and is entitled
2 to recover its attorneys fees and costs.

3 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

4 **SECOND CLAIM FOR RELIEF**
5 **(Money had and Received)**

6 9. Plaintiff repleads and realleges paragraph 1 through 8, inclusive, of its complaint
7 as though set forth in full herein and incorporates the same by this reference.

8 10. On or about June 30, 2003, Defendant became indebted to Plaintiff in the sum
9 of \$75,400.37 for money had and received by Defendant by mistake.

10 11. Neither the whole nor any part of the sum has been paid, although demand
11 therefor has been made, and there is now due, owing and unpaid the sum of \$75,400.37 together
12 with interest at the legal rate from June 30, 2003.

13 12. As a direct and proximate result of the conduct as alleged herein, Plaintiff has
14 suffered damages in amount of excess of Ten Thousand Dollars (\$10,000.00), according to proof
15 at time of trial, plus prejudgment interest at the legal rate from June 30, 2003.

16 13. Plaintiff has been required to retain counsel to initiate this action and is entitled
17 to recover its attorneys fees and costs.

18 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

19 **THIRD CLAIM FOR RELIEF**
20 **(Fraud/Conversion)**

21 14. Plaintiff repleads and realleges paragraphs 1 through 13, inclusive, of its
22 complaint as though set forth in full herein and incorporates the same by this reference.

23 15. Plaintiff is informed and believes that on or about June 30, 2003, when defendant
24 received the \$75,400.37 overpayment, Defendant knew that he was not entitled to these funds but
25 failed to reveal and suppressed this fact from Plaintiff, First American and all others. Defendant's
26 failure to disclose and suppression of this fact misled First American, as well as others.

27 ///

28 ///

///

1 16. Plaintiff, First American is informed and believes that Defendants failed to
2 disclose and suppressed the fact that they were not entitled to the \$75,400.037 with the intent to
3 convert the money to his own use and to induce First American to act in the manner herein alleged
4 in reliance thereon.

5 17. Plaintiff, at the time these failures to disclose and suppressions of fact occurred,
6 and at the time Plaintiff took the actions herein alleged, was ignorant of the existence of the facts
7 which Defendant suppressed and failed to disclose. If Plaintiff had been aware of the existence
8 of the facts not disclosed and suppressed by Defendant, Plaintiff would not have caused the funds
9 to be disbursed to Defendant as herein alleged.

10 18. As a direct and proximate result of Defendant's fraud, deceit, conversion and the
11 facts herein alleged, Plaintiff, has been damaged in a sum in excess of Ten Thousand Dollars
12 (\$10,000.00), together with interest at the legal rate from June 30, 2003.

13 19. The aforementioned conduct of Defendant was willful and malicious and done
14 with the intent to convert the money belonging to First American and to deprive Plaintiff of the
15 money, and thus Plaintiff is entitled to an award of punitive of exemplary damages.

16 20. Plaintiff has been required to retain counsel to initiate this action and is entitled
17 to recover its attorneys fees and costs.

18 **WHEREFORE**, Plaintiff prays for judgment against Defendants as set forth below.

19 **FOURTH CLAIM FOR RELIEF**
20 **(Unjust Enrichment)**

21 21. Plaintiff repleads and realleges paragraphs 1 through 20, inclusive, of its
22 complaint as though set forth in full herein and incorporates the same by this reference.

23 22. By reason of Defendants' receipt, retention and refusal to return the \$75,400.37
24 mistakenly paid to Defendant, Defendants have been unjustly enriched by receiving, accepting,
25 and retaining said funds.

26 23. The use and enjoyment by Defendants of said funds has resulted in damages to
27 Plaintiff in a sum in excess of Ten Thousand Dollars (\$10,000.00), according to proof at the time
28 of trial, plus prejudgment interest at the legal rate from June 30, 2003.

1 2. The facts and reasons why these grounds exist are Plaintiff's allegations and the
2 supporting Affidavits which show that Defendant, Frank W. Rupp, has taken and converted
3 property owned by or entrusted to Plaintiff, without Plaintiff's consent; that Defendant, Frank W.
4 Rupp, appears to have transferred the mistakenly disbursed funds to a bank account located in
5 Reno, Nevada; that Defendant, FRANK W. RUPP is likely to remove his money and property
6 from the state of Nevada; that Defendant, Frank W. Rupp's, property which may remain in this
7 state, if any, will be insufficient to satisfy the Plaintiff's claims; and that Defendant, Frank W.
8 Rupp, has obtained funds through embezzlement or larceny.

9
10 3. Having reviewed the Verified Complaint of Plaintiff and the documents on file
11 herein, it appears that Plaintiff has alleged meritorious claims for relief.

12
13 4. The amount for which the attachment and garnishment will issue in this action is
14 the sum of Seventy-Five Thousand Four Hundred Dollars and Thirty-Seven Cents (\$75,400.37).

15 5. Prior to the attachment, a written undertaking on the part of Plaintiff, payable in
16 lawful money of the United States in the sum of \$3,000.00 shall be given before the
17 Writs herein will issue.

18
19 6. The names of all third persons upon whom Writs of Garnishment in aid of
20 attachment shall be served upon are:

21 (a) Bank of America, Branch No. 8582, located at 5905 South Virginia Street,
22 Reno, Nevada, 89502,

23
24 7. The property to be attached and garnished herein is properly described as follows:
25 \$75,400.37 in money held in an account at Bank of America, Branch No. 8582, located at 5905
26 South Virginia Street, Reno, Nevada,

27 ///
28

JUL-17-2003 THU 11:26 AM

FAX NO.

P. 04

1 2. I have personal knowledge of the matters set forth in this Affidavit, and if called
2 as a witness, I could competently testify to the matters set forth herein.

3 3. I am an attorney for First American Title Company (hereinafter "First American")
4 licensed to practice law in the State of California.

5 4. First American is the plaintiff herein and has valid claims for relief against
6 Defendant, Frank W. Rupp, for breach of implied contract, money had and received,
7 fraud/conversion and unjust enrichment.

8 5. I believe that First American is entitled to recover from FRANK W. RUPP the sum
9 of at least Seventy-Five Thousand Four Hundred Dollars and Thirty-Seven Cents (\$75,400.37),
10 plus interest, costs and attorneys fees.

11 6. There exists grounds for attachment and garnishment without notice because
12 personal property entrusted to First American has been taken and converted by FRANK W. RUPP
13 without First American's consent; Affiant is informed and believes, FRANK W. RUPP is about
14 to further give, hypothecate, pledge, dispose of or conceal his money or property; Affiant is
15 informed and believes, FRANK W. RUPP's money or property remaining in Nevada or that
16 remaining unconcealed will be insufficient to satisfy First American's claims; and First American
17 is seeking recovery of funds obtained by FRANK W. RUPP through larceny. As further evidence
18 of the need for attachment and garnishment without notice, your affiant is informed and believes
19 that Defendant, FRANK W. RUPP, transferred the mistakenly disbursed funds across state lines
20 to a bank account located in Reno, Nevada and has refused, failed and continues to refuse and fail
21 to return the funds mistakenly disbursed to him.

22 7. The property sought to be attached and garnished is money, more specifically
23 described as funds mistakenly disbursed by First American, the escrow holder for the sale of
24
25
26
27
28

CERTIFICATE OF SERVICE

Douglas J. Gould

I Douglas J. Gould submitted the forgoing in person in the U.S District Court in Oakland California 2- of each as listed on date of 7/2/08;

Request to withdraw waiver of Court filing Fee.

Demand for Jury Trial.

The original Complaint filed in the Reno Nevada District Court by the Defendant. *AND entire complaint and exhibits of case on file as 08-01939SBA to defendant only. AND summons*

I -----, do hereby state, I am not a party to this action, and I am over 18 years of age, that on 07/ /08, Did mail by U.S. postal over night registered mail the said same documents as listed above to the forgoing address:

Corporate Headquarters of Defendant
The First American Corporation
First American Title Company
1 First American way
Santa Ana CA, 92707